

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 23209 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ? -**No.**
 - 2 To be referred to the Reporter or not ? -**No.**
 - 3 Whether their Lordships wish to see the fair copy of the judgment ? -**No.**
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? -**No.**
 - 5 Whether it is to be circulated to the civil judge ? -**No.**

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BHURARAM KERAJI CHAUDHARI (DETENUE) THROUGH BROTHER - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA**Date : 16/12/2005****ORAL JUDGMENT**

1.Bhuraram Keraji Chaudhari (detenu) through his cousin brother, Megaram Parkhaji Chaudhari, petitioner has filed this habeas corpus petition under Article 226 of

the Constitution of India for quashing and setting aside the order of detention dated 14/5/2005 passed by the Police Commissioner, Surat and further prayed that this Court may direct the respondents to release the detenu forthwith from jail. Though the detention order is of May 2005, petition was filed on 30/11/2005. On 2/12/2005, this Court (Coram:K.M.Mehta,J.) has issued rule which is returnable on 16/12/2005. On behalf of respondent, Mr.L.R.Pujari, learned APP appears and therefore, matter has been taken up for final hearing to this Court.

2.Heard Ms.Banna Dutta, learned advocate on behalf of Mr.A.R.Shaikh, learned advocate appears for the petitioner. She has invited my attention to the order of detention dated 14/5/2005 passed by the authority under the provisions of PASA Act. She has also stated that the order of committal was also passed on the same day and detenu was detained in Rajkot Jail on the same day. She has invited my attention to the grounds furnished by the detaining authority by his communication dated 14/5/2005. The learned counsel has submitted that in the grounds of detention, it is stated that detenu has committed offence registered at Udhna Police Station in connection with Cr. Case No.203

of 2005 dated 17/3/2005 under the provisions of Section 66(1)(B) and 65(A) of the Bombay Prohibition Act. It is alleged that petitioner was storing 514 bottles of country made liquor valued at Rs.15,420/- and one truck valued at Rs.1,50,000/- (total Rs.1,65,420/-).

3.The authority has also stated that as the detenu is 'bootlegger' under the provisions of Section 2(b) of the PASA Act as the activities of the detenu affects the public health in this behalf. He is carrying on business of buying and selling the liquor in this behalf. It was stated that liquor is injurious to the health and therefore, the authority has passed the order under Section 3(1) of the Act for detaining the detenu in this behalf. As per the said order, it was stated that detenu is to make representation accordingly. The detenu has made representation on 28/11/2005 to the Police Commissioner, Surat.

4.The learned counsel for the petitioner has stated that she desires to challenge the detention order on the ground that the authority has relied upon only case relating to the Prohibition Act and on the said ground, authority could not come to the subjective satisfaction that the detenu is 'bootlegger' and activities of the

detenu affect the public order. Therefore, there is no question of breach of any public order. There may be breach of law and order situation. In support of the same the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment of the Division bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in Letters Patent Appeal 223 of 2000 in Special Civil Application No.554 of 2000 in the case of Ashok Balabhai Makwana and judgment of the Division Bench of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21. There is only one solitary offence and therefore, the order of detention is required to be quashed and set aside.

5.On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order of detention. The authority has not filed affidavit in reply in this behalf.

6.Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any

credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana (supra) and another division bench judgment of this Court (C.K.Thakkar, Acting C.J. and K.M.Mehta, J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7.Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life

of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, judgment of Division Bench of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.Mehta,J.) in the case of Ashokbhai Jivrajbhai and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8.I have considered the facts and circumstances of the case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all

these, I am of the view that the activities of the detenu may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I hereby quash and set aside the order of detention. Petition is allowed. Bhuraram Keraji Chaudhari, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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